

16-16269

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE EVELYN RIVERA

FILED MAR 16 2017

CIVIL ACTION

NO. 17-cv-0408

ORDER

AND NOW, this 16th day of March 2017, it is hereby ORDERED that Appellant's Motion to Consolidate is DENIED as moot. (Doc. No. 2). The two other cases with which Appellant seeks to consolidate have both been dismissed for lack of jurisdiction.

However, contrary to Appellee's assertion, it appears from the record that the instant appeal was timely filed, and therefore, the Court has jurisdiction. "An appeal from a decision of a bankruptcy court is subject to the requirements of 28 U.S.C. § 158(c)(2), which provides that appeals 'shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.'" In re Caterbone, 640 F.3d 108, 111 (3d Cir. 2011)(citing 28 U.S.C. § 158(c)(2)). Rule 8002 states that "a notice of appeal must be filed with the bankruptcy clerk within 14 days after *entry* of the judgment, order, or decree being appealed." Fed. R. Bankr. P. 8002(a)(1) (emphasis added).

In this case, the Bankruptcy Court's order avoiding the judicial lien against debtor's property was entered on the docket on January 5, 2017, and the Appellant's notice of appeal was filed on January 25, 2017. (Doc. No. 1). Nevertheless, in a filing to this Court, pro se Appellant indicates that he was arrested on or about November 28, 2016, and has since been incarcerated. (Doc. No. 10). The fact that Appellant has been incarcerated is relevant as such status invokes Rule 8002(c)(1), which states that "if an inmate confined in an institution files a notice of appeal

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CLERK OF COURT

from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing." Fed. R. Bankr. P.

8002(c)(1). Despite the notice of appeal being filed on January 25, 2017, the record shows that Appellant's actual notice of appeal was dated January 18, 2017; the Court construes this date as the date in which the notice was placed in the institution's internal mail system. (Doc. No. 1).

Therefore, the notice of appeal was deposited 13 days after the entering of the Bankruptcy Court's order on the docket; the appeal is timely.

BY THE COURT:

/s/ Legrome D. Davis

Legrome D. Davis, J.